

	<b>HUTTO POLICE DEPARTMENT</b>	
	<b>Policy 2.4 Internal Discipline Process</b>	
	<b>Effective Date:</b> April 1, 2014	<b>Replaces:</b> G.O. Policy 2.4 and G.O. Policy 2.5
	<b>Approved:</b> <u>Rick Stone</u> Chief of Police	
	<b>Reference:</b> Texas Best Practices Model Policies 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, and 2.10; City of Hutto Employee Policies and Procedures Handbook	

## I. POLICY

The public image of the police department is protected by a professional response to allegations of misconduct against its personnel. The department must competently and impartially investigate all allegations of misconduct and complaints bearing on the department's response to community needs. It is the department's policy to impose any necessary disciplinary action fairly, consistently, and impartially and to offer adequate appeal procedures to ensure that employee rights are protected.

This policy applies to both sworn and non-sworn members of the Department.

## II. PURPOSE

The purpose of this policy is to describe procedures for receiving complaints against departmental personnel, to classify and define the levels of complaints, and to establish procedures for the investigation and final dispositions of complaints.

## III. DEFINITIONS

**Complainant:** A person claiming to be the victim of misconduct by a member of the Department.

**Investigation:** An administrative or criminal investigation, conducted by the Department, of alleged misconduct by a member of the Department that could result in punitive action against that person.

**Investigator:** A member of the Department who is assigned to conduct an investigation.

**Punitive action:** A disciplinary suspension, uncompensated duty, termination, demotion in rank, written reprimand, or any combination of those actions.

**Normally Assigned Working Hours:** Includes those hours during which a member of the Department is actually at work or at the person's assigned place of work, but does not include any time when the person is off duty on authorized leave, including sick leave.

<b>Formal Discipline:</b>	Discipline involving a written reprimand, suspension, uncompensated duty, demotion, or termination.
<b>Informal Discipline:</b>	Discipline involving remedial training or counseling.
<b>Minor Complaints:</b>	Complaints which do not involve misconduct or moral turpitude but which, if proven, indicate a need for corrective action.
<b>Misconduct:</b>	Violation of federal or state law, city ordinance, City of Hutto Employee Policies & Procedures Handbook, or any standards of conduct, rules, regulations, or General Orders of the Hutto Police Department.
<b>Serious Complaints:</b>	Complaints which involve allegations of misconduct, corruption, brutality, misuse of force, breach of civil rights and criminal conduct.
<b>Uncompensated Duty:</b>	Days of work without pay that are in addition to regular or normal work days

#### **IV. FORMAL COMPLAINT PROCEDURES** *(TBP: 2.04)*

##### **A. Receipt of Complaints**

A copy of "How to Make a Complaint" will be posted in the public area of the department, on the city web-site, provided to media representatives, and provided to any person requesting information on how to make a complaint.

1. The department encourages any person to bring forward complaints regarding the conduct by departmental personnel. Department members shall receive all complaints courteously and shall handle them efficiently. All personnel are obligated to explain complaint procedures to any individual who requests information on complaint procedures.

##### **B. Time Limit on Accepting Complaints**

Personnel complaints will not be accepted more than forty-five days after the alleged incident, with the following exceptions:

1. When the complaint involves a criminal violation, the criminal statute of limitations will prevail. These limitations will not prevent the department from taking necessary actions to preserve the department's integrity.
2. When the complainant can show good cause for not making the complaint within the specified time limit, the Chief of Police may waive this requirement.

3. All complaints alleging a violation of departmental policy or state statute will be investigated. Complaints regarding law-enforcement operations will usually be managed through the chain of command, beginning with the first-line supervisor. Complaints involving how law-enforcement service is provided or a failure to provide service or improper attitudes or behavior may be investigated by an assigned supervisor or by the Chief of Police. Depending on the nature of the complaint, the Chief of Police may request another agency or the Department of Public Safety to undertake the investigation. *(TBP: 2.06)*

### C. Complaint Process

1. All complaints, regardless of nature, may be filed in person, by e- mail, by regular mail, or by phone at any time. As part of the follow-up investigation, persons making complaints by mail or phone normally shall be interviewed and a written, signed complaint prepared. A signed letter of complaint will be accepted as a complete complaint without requiring any specific form. Anonymous complaints shall be followed up to the extent possible.
2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of any individual's complaint. An employee of the department, who interferes with, discourages, or delays the making of a complaint shall be subject to disciplinary action.
3. Complaints relative to differences of opinion between a police officer and a citizen over the issuance of a traffic citation, or regarding guilt or innocence subsequent to an arrest will not be investigated. However, if a person alleges that a violation of law or departmental policy has occurred, the complaint, at the discretion of the Chief of Police, may be investigated.
4. A person with a complaint shall be referred to a supervisor of a grade higher than the person complained about, who shall assist the complainant in recording pertinent information. The first level supervisor shall conduct a preliminary inquiry. The Lieutenant or Chief of Police may, if appropriate, conduct a preliminary inquiry. A preliminary inquiry consists of questioning the officer, complainant(s), or witness (es) and securing evidence. Upon completion of a preliminary inquiry, the following documents shall be prepared and forwarded through the chain of command:
  - a. A report of the alleged violation;
  - b. Any documents and evidence pertinent to the investigation; and
  - c. Recommendations for further investigation or other final disposition.

5. If the individual receiving a complaint determines that the complainant is apparently under the influence of an intoxicant or drug, appears to have a mental disorder, or displays any other trait or condition bearing on his or her credibility, the supervisor or investigator shall note these conditions. Any visible marks or injuries relative to the allegation shall be noted and photographed.
6. Prisoners or arrested persons also may make complaints. Circumstances may require a department representative to meet the complainant at a jail or prison for an interview. If appropriate, the representative will take photographs of the prisoner's injuries.
7. An employee who receives a complaint through the mail shall place the correspondence and envelope in a sealed envelope and forward it to the Chief of Police, who shall determine investigative responsibility.
8. Complaints received by telephone by any member of the Department shall be courteously and promptly referred to a Sergeant, Lieutenant, or the Chief of Police. The departmental member receiving the complaint shall record the name and telephone number of the complainant and state that a police representative will call back as soon as practical.
9. Formal complaints must be in writing and signed by the person making the complaint. An affidavit is preferred but not required. Informal verbal complaints should be assigned to the first line supervisor when available.
10. Departmental personnel who initiate a complaint against another member of the Department shall report the alleged violation(s) in a written report to the Chief of Police.
11. In every case, the Chief of Police will be notified of any written complaint as soon as possible through the chain of command. Written complaints received overnight will be brought to the Chief's attention the next business day. Complaints alleging a violation of the law or any serious misconduct should be reported immediately regardless of the time of day. (*TBP: 2.07*)
12. The Chief of Police or his designee shall notify the complainant as soon as practical, that the department acknowledges receipt of the written complaint, that it is under investigation and that the complainant will be advised of the outcome.
13. The Chief of Police will ensure that the complaint is entered into the complaint log, assigned a complaint number, and have the complaint investigated. Minor complaints alleging rudeness, minor policy violations and/or performance issues may be assigned to a supervisor for investigation and final resolution.

#### D. Disposition of Complaints

1. If a criminal offense is alleged, two separate investigations shall be conducted, a criminal investigation as well as an administrative or internal investigation. The criminal investigation examines compliance with the criminal law while the internal investigation determines compliance with policy and procedure. These investigations will be assigned to an internal investigator or an outside agency as determined by the Chief.
  2. In cases of Serious Complaints, the Chief of Police shall:
    - a. Determine if the officer complained of should remain on-duty, be assigned in an administrative capacity, or put on administrative leave until completion of the investigations.
    - b. Determine and assign responsibility for the investigations.
    - c. Cause the complaint to be registered and assigned an investigation number in the complaint log.
    - d. Maintain close liaison with the prosecuting attorney's office in investigating alleged criminal conduct. Where liability is at issue, the Chief shall similarly maintain contact with the city attorney or legal counsel.
- E. All investigations will be completed within forty-five days to include the taking of disciplinary action when necessary. If additional time is necessary to conclude the investigation, a request for extension will be presented to the Chief in writing providing justification for the extension. If approved by the Chief, a specific number of days will be approved and a copy will be provided to the involved departmental member and the original placed in the Internal Affairs case file. *(TBP: 2.05)*
- F. Upon completion of any investigation, the affected departmental member will be provided a copy of the investigation for review.
- G. Upon completion of any investigation, the Chief of Police will notify the complainant in writing of the findings of the investigation. *(TBP: 2.10)*

#### V. INVESTIGATIVE PROCEDURES

##### A. Interviews

1. An investigator may interview a member of the Department who is the subject of an investigation only during the Departmental member's normally assigned working hours unless:
  - a. the seriousness of the investigation, as determined by the Chief of Police or designee, requires an interview at another time; and,

- b. the Departmental member is compensated for the interview time on an overtime basis.
- 2. The Chief of Police may not consider work time missed from regular duties by a member of the Department due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.
- 3. An investigator may not interview a member of the Department who is the subject of an investigation or conduct any part of the investigation at that person's home without that person's permission.
- 4. A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decision maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct. A Departmental member who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identities of each investigator participating in an interview of the Departmental member. Not later than the 30th day after the date that a complaint is received by an investigator, the investigator must inform the Departmental member of the nature of the investigation and the name of each person who complained about the Departmental member, if known, concerning the matters under investigation unless:
  - a. a criminal investigation has been initiated as a result of the complaint; or
  - b. the disclosure of information concerning the name of the complainant or the matters under investigation would hinder a criminal investigation.
- 5. Before an investigator may interview a member of the Department who is the subject of an investigation, the investigator must inform the Departmental member in writing of the nature of the investigation and the name of each person who complained about the Departmental member concerning the matters under investigation. An investigator may not conduct an interview of a member of the Department based on a complaint by a complainant who is not a peace officer unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. In an investigation authorized under this subsection, an investigator may interview a member of the Department about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. Not later than the 48th hour before the hour on which an investigator begins to interview a member of the Department regarding an allegation based on a complaint, affidavit, or statement, the investigator shall give the Departmental member a copy of the affidavit, complaint, or statement. An interview may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in

writing, under oath, that the complaint was anonymous. This subsection does not apply to an on-the-scene investigation that occurs immediately after an incident being investigated if the limitations of this subsection would unreasonably hinder the essential purpose of the investigation or interview. If the limitation would hinder the investigation or interview, the Departmental member under investigation must be furnished, as soon as practicable, a written statement of the nature of the investigation, the name of each complaining party, and the complaint, affidavit, or statement.

6. An interview session of a Departmental member who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the Departmental member to attend to personal physical necessities.
7. An investigator may not threaten a Departmental member who is the subject of an investigation with punitive action during an interview. However, an investigator may inform a member of the Department that failure to truthfully answer questions directly related to the investigation or to fully cooperate in the conduct of the investigation may result in punitive action.
8. All investigative interviews will be recorded by the investigator and the Departmental member who is the subject of an interview will be so informed.

B. Presence of Supervisor, Departmental Member, or Legal Counsel

1. Members of the Department are permitted to have their supervisor or another member of the Department of their choice with them to observe only during any interview of an administrative or non-criminal nature.
2. Members of the Department are not permitted to have legal counsel present during an interview of an administrative or non-criminal nature.
3. Members of the department are not permitted to have supervisor or personal representative with them during any interview of a criminal nature.
4. Members of the department are permitted to have legal counsel with them during any interview of a criminal nature.

## **VI. ADMINISTRATIVE TOOLS AND RESOURCES**

### **A. Emergency Relief from Duty**

1. An employee may be relieved from duty with pay whenever a supervisor or command officer questions an employee's medical or psychological fitness for duty; the conduct of the employee interferes with the operations of the police department, or refuses to obey a direct order. An internal investigation may follow.
2. The Sergeant or Lieutenant must promptly report this action through the chain of command to the Chief of Police, accompanied by a written report setting forth details and circumstances.

### **B. Determination of Physical and Mental Fitness**

1. If a question arises as to whether a member of the Department is sufficiently physically or mentally fit to continue the person's duties, the Chief of Police, after consultation with the City's Human Resources Director, may require a current employee to undergo one or more medical and/or psychological examinations to determine fitness for continued employment; as may be necessary in order for the City to provide a reasonable accommodation; following an injury or accident; and as otherwise permitted in accordance with the Americans with Disabilities Act. The Departmental member will submit to the Chief of Police a statement from the person's personal physician, psychiatrist, or psychologist, subject to HIPPA regulations, stating the examiner's assessment as to whether or not the department member is fit to continue the person's duties.
2. If the Chief of Police or Departmental member undergoing the examination questions the report or desires a second opinion, the City Manager shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the Departmental member and to submit a report to the City Manager, the Chief of Police, and the person; subject to HIPPA regulations, stating the examiner's assessment as to whether or not the department member is fit to continue the person's duties.
3. If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the Departmental member's personal physician, psychiatrist, or psychologist, as appropriate, the City Manager shall appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the Departmental member. The board's findings as to the person's fitness for duty shall determine the issue.



4. The Departmental member shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.
5. Refusal to submit to a medical or psychological examination or deliberately impeding the administration of these examinations shall be grounds for disciplinary action and may result in dismissal from the department.

#### C. Alcohol or Drug Examinations

1. The Chief of Police or supervisor in authority may, based upon reasonable suspicion or observation, require a Departmental member to submit to a test for alcohol or drug use while on duty. The results may be used in an administrative investigation. Refusal to submit to the examination will be grounds for disciplinary action and may result in the Departmental member's termination.
2. If a member of the Department is believed to be under the influence of alcohol or drugs, not operating a police vehicle, the City of Hutto Drug and Alcohol Use Policy will apply.
3. If the member of the Department is believed to be under the influence of alcohol or drugs while operating a police vehicle, a licensed operator shall administer the breath test and/or a licensed medical professional shall draw a blood sample for analysis. The Chief of Police or supervisor in authority shall witness the test and sign the report.
4. If the Departmental member's test results show any evidence of drugs or alcohol, or if there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Chief of Police or supervisor in authority.
5. If the Departmental member is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood or urine test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample shall be handled using the same safeguards as evidence in a criminal process.
6. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the Departmental member shall be relieved of duty as soon as possible by the Chief of Police or supervisor in authority.
7. If a member of the Department refuses to submit to a test, (alcohol or drugs) then the Chief of Police or supervisor in authority shall immediately relieve the Departmental member from duty for failure to cooperate in an administrative investigation.

#### D. Photograph and Lineup Identification Procedures

Members of the Department may be required to stand in a lineup for the purpose of identifying a member of the Department accused of misconduct. Refusal to stand in a lineup is grounds for disciplinary action and may result in termination. Photos of departmental personnel may be maintained for the purpose of identification of a Departmental member accused of misconduct.

#### E. Property & Equipment Inspections

1. All property in and on the premises of the City of Hutto, whether the property belongs to the City or is brought on to City property by a Departmental member, including without limitation files, desks, lockers, computers, vehicles, purses, briefcases, and packages, is subject to search in the investigation of work related misconduct. Officers do not retain a property interest in or on city property or premises, including parking lots. All searches will be reasonable at inception and limited in scope in relation to the nature of the investigation.
2. Reasonable searches of department equipment (lockers, desks, police vehicles, etc.) and facilities assigned to the exclusive use of an employee may be conducted by a supervisor if it is a routine search for the maintenance of discipline and/or for security purposes.
3. If a search is initiated for the purpose of securing evidence to be used in administrative investigation, the search would be reasonable. The search must be one that is designed to enforce regulations and not criminal violations. Searches must not be done in anticipation of any federal or state prosecution.
4. Refusal to submit to a search or deliberately impede the administration of a search shall be grounds for disciplinary action and may result in termination.

#### F. Financial Disclosure Statements

A member of the Department may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial transactions

#### G. Polygraph Examinations

1. A member of the Department may not be required to submit to a polygraph examination as part of an internal investigation regarding the conduct of the Departmental member unless:
  - a. the complainant submits to and passes a polygraph examination, or;

- b. the Departmental member is ordered to take an examination under Subsection 6 below.
2. Subsection (1)(a) does not apply if the complainant is physically or mentally incapable of being polygraphed.
3. The police department shall, on the written request of a Departmental member under investigation, provide to the Departmental member the complainant's polygraph examination results within 48 hours after the request.
4. For the purposes of this section, a Departmental member passes a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated regarding matters critical to the subject matter under investigation.
5. The results of a polygraph examination that relate to the complaint under investigation are not admissible in an appeals proceeding before the City Manager or a hearing examiner.
6. The Chief of Police may order a member of the Department to submit to a polygraph examination if the Police Chief considers the circumstances to be extraordinary and believes that the integrity of a Departmental member or the police department is in question.

#### H. Temporary Suspension Without Pay

1. During an investigation into alleged criminal offenses or serious violations of policy, the Chief of Police may, at his/her sole discretion, place the departmental member under investigation on temporary suspension without pay for a period not to exceed 30 days after the date that the criminal offense or serious violation was reported to the Chief of Police. The departmental member under temporary suspension is subject to recall, with pay, during normal business hours of the city to participate in the investigation.
2. The Chief of Police shall notify the Departmental member in writing that the person is being placed on temporary suspension for a specific period without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the alleged complaint.
3. If the investigation directly related to the complaint is completed prior to the date of the completion of the temporary suspension, the Chief of Police may terminate the temporary suspension and adjudicate the complaint according to this policy.

4. A member of the Department indicted for a felony or officially charged with the commission of a Class A or B misdemeanor who has also been charged with administrative violations directly related to the indictment or complaint may not delay their appeal process under this policy.
5. If the Chief of Police places a member of the Department on temporary suspension without pay under this section and the complaint is classified in any category other than “Sustained”, the Departmental member may appeal to the City Manager for recovery of back pay. The City Manager may award all or part of the back pay or reject the appeal.
6. Acquittal or dismissal of an indictment or a complaint does not mean that a member of the Department has not violated administrative rules and does not negate the administrative charges that have been or may be brought against the Departmental member.
7. Conviction of a felony is cause for immediate termination and conviction of a Class A or B misdemeanor may be cause for disciplinary action up to and including termination.

#### I. Self Reporting

Any employee arrested for, issued a summons, charged with, convicted of any crime, or required to appear as a defendant in any criminal or civil proceedings, must inform the Chief of Police in writing as soon as possible. Employees do not have to report parking tickets. Failure to notify the department of the foregoing shall be cause for discipline up to and including termination.

## VII. ADJUDICATION OF COMPLAINTS

### A. The Chief of Police will classify completed internal affairs investigations as:

1. Unfounded: Allegation is found to be false or not factual.
2. Exonerated: Allegation is factually accurate but was lawful and proper.
3. Not Sustained: Insufficient evidence either to prove or disprove the allegation.
4. Sustained: Allegation is supported by sufficient facts and evidence.  
(TBP: 2.04)
5. Policy Failure: Evidence reveals an inadequate policy or procedure not in keeping with recognized legal or best practices.

## **VIII. ADMINISTRATION OF DISCIPLINE**

- A. After an appropriate investigation, should the Chief of Police approve sustaining the allegation, the Chief may request review of the investigation by the officer's chain of command or a board convened for the purpose of obtaining their recommendations for disciplinary action.
- B. Upon receipt of the recommendations, the Chief shall request the officer read the written investigation summary and initial each page. The review will take place in the presence of the investigating officer or other staff member. The employee will be allowed up to 24 hours to add a written statement to the investigative package stating any arguments with the evidence or investigation process.
- C. The Chief of Police will again review the investigation, considering the employee's input and may then decide on the discipline or send the investigation back for further investigation.
- D. Disciplinary action taken shall be determined taking into consideration the seriousness of the violation or the extent of injury to the victim, and the officer's prior disciplinary history. It shall be commensurate with the circumstances surrounding the incident and in consideration of the officer's service record and prior sustained complaints.

## **IX. RECORDS**

### **A. Disciplinary Records (*TBP: 2.09*)**

- 1. The department shall maintain a log of all complaints and final disposition.
- 2. The Internal Affairs files, including all written documents and electronic files and recordings pertaining to internal investigations and all materials pertaining to formal discipline, shall be kept in a secure area in the Chief's office and shall be maintained in accordance with state law and city policy. The Chief of Police will maintain keys to the Internal Affairs files.
- 3. The Chief shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.
- 4. The Chief shall publish an annual or other periodic summary of complaints that shall be made available to the public.

### **B. Confidentiality of Reports**

- 1. All complaints and/or investigations will be documented and maintained in accordance with the City of Hutto records retention schedule.

2. All reports relating to an internal investigation are considered confidential, will be secured at all times, and will not be released to unauthorized persons. Exception: Under Texas Attorney General Opinion, ORD-208, the names of complainants who filed formal complaints with police departments, the name of the officer who is the subject of the complaint and the final disposition of the complaint by the police department are public information. This information is not exempted under the Texas Public Information Act and is available to any requester. The Department will comply with the Texas Public Information Act.
3. The department will respond to any subpoena for records. If the court orders the department to produce the records, the order must be complied with. In such situations, the courts have viewed the reports "in camera", which means the court would review the records for any statement by the officer that conflicts with the officer's court testimony. If such conflict is found, the conflicting portion would be admitted for the purpose of impeaching the officer's testimony. This department will abide by court decisions.
4. Records of informal discipline will be maintained only in the departmental member's personnel file. The department may not include a record of informal discipline in the Internal Affairs files maintained by the Chief of Police. The record in the personnel file may be considered in a periodic performance evaluation of Departmental member only if the informal discipline occurred during the performance period that is the subject of the performance evaluation.
5. The department may maintain an electronic record of informal discipline that may be used by the department for tracking and statistical purposes.

## **X. INFORMAL DISCIPLINE**

### **A. Supervisor Responsibilities**

First-line supervisors are primarily responsible for ensuring conformance with departmental standards and policies.

1. First-line supervisors shall know the officers in their charge by closely observing their conduct and appearance.
2. First-line supervisors shall be alert to behavioral changes or problems in their subordinates and, if necessary, document these changes and confer with higher authorities. The first-line supervisor shall assess the behavior and take or recommend appropriate action.

3. The supervisor shall recommend and, if appropriate, assist in conducting extra training for officers not performing according to established standards.
  4. The first-line supervisor shall employ counseling techniques encouraged by the department. Counseling is used to adjust and correct minor, infrequent errors or instances of poor performance and to ascertain the nature of any professional or personal problems that bear on performance. The supervisor shall document all instances of formal counseling.
- B. The department may use a supervisory intervention procedure known as informal discipline to modify a police officer's behavior through:
1. Positive encouragement
  2. Counseling
  3. Job skills training
  4. Repeating task performances, classes, or exercises or
  5. Re-education efforts, including a review of:
    - a. department general orders;
    - b. standard operating procedures; or
    - c. lesson plans from a police officer training academy.
- C. Informal discipline is not considered a formal disciplinary action for any purpose.
- D. A member of the Department who is the subject of informal discipline may not file an appeal or grievance regarding the action taken by the department.

## **XI. FORMAL DISCIPLINE**

- A. The department generally follows the principles of progressive discipline. However, the department is not obligated to use all of the progressive disciplinary steps and may begin the disciplinary process at any level, up to and including termination, depending upon the severity of the conduct, the employee's work performance and prior disciplinary history, or other circumstances.

B. Levels of Discipline

1. Letter of Counseling
2. Written reprimand
3. Suspension Without Pay
4. Uncompensated Duty
5. Demotion
6. Termination

C. A Letter of Counseling requires documentation with an employee's acknowledgment of such record. The following steps should be observed:

1. At the time of issuance of a Letter of Counseling, the departmental member receiving it shall be informed as to the correct behavior required and further advised that a written record shall be maintained concerning the counseling, and that the employee may read the record.
2. The departmental member shall be further advised that he or she has the right to file a statement with the Letter of Counseling setting forth his or her position in case of disagreement.
3. A member of the Department who receives a Letter of Counseling may not file an appeal or grievance beyond the redress stated in Subsection 2 above, regarding the action taken by the department.

D. The supervisor issuing a Letter of Counseling shall include in the letter the following information:

1. Employee's name;
2. Date of counseling;
3. Summary of reasons for counseling;
4. Summary of employee's response;
5. Suggestions for improvement or specific actions suggested;
6. Name of supervisor and signature.



7. The following statement must appear:

“I acknowledge that I have received corrective action and I have been advised of the following rights: 1) That a written record of this corrective action shall be maintained in the Department’s Internal Affairs files; 2) That I have the right to review this record and respond in writing; and 3) That I am required to acknowledge the corrective action by signing the record.”

8. The departmental member shall sign and date the form following the statement.

E. A Letter of Counseling may include a direction for remedial training. This training may be deemed necessary to rectify the improper behavior. Remedial training may include attendance at academy classes, in-service, or other training specially created to help the employee correct or modify his or her behavior. Remedial training is reasonably offered until the employee can demonstrate proficiency in the corrected behavior. All remedial training shall be documented.

F. Written Reprimand

1. A written reprimand, issued by any supervisor or command officer, cautions a departmental member about poor behavior, sets forth the corrected or modified behavior mandated by the department, and specifies the penalty in case of recurrent poor behavior.
2. A written reprimand will be reviewed by the City’s Human Resources Division prior to being given to the employee.
3. If an investigation results in a written reprimand, the reprimand may not be placed in the Department’s Internal Affairs files unless the Departmental member is first given an opportunity to read and sign the document. If the Departmental member refuses to sign the reprimand, it may be placed in the Internal Affairs files with a notation that the person refused to sign it. A Departmental member may respond in writing to a written reprimand that is placed in the Department’s Internal Affairs files under this subsection by submitting a written response to the Chief of Police within 10 days after the date the Departmental member is asked to sign the document. The response shall be placed in the Department’s Internal Affairs files.
4. A departmental member may appeal a written reprimand in writing within ten days of its receipt to the Chief of Police who shall be the final arbitrator.

## G. Suspension Without Pay

1. The Chief of Police, after a complete and thorough investigation, may suspend an employee without pay for gross breaches of discipline or conduct including but not limited to:
  - a. conviction of a felony, Class A or B misdemeanor, or other crime involving moral turpitude;
  - b. violations of a municipal charter provision;
  - c. acts of incompetency;
  - d. neglect of duty;
  - e. discourtesy to the public or to a fellow employee while the Departmental member is in the line of duty;
  - f. acts showing lack of good moral character;
  - g. drinking intoxicants while on duty or intoxication while off duty;
  - h. conduct prejudicial to good order;
  - i. refusal or neglect to pay just debts;
  - j. absence without leave;
  - k. shirking duty or cowardice; or
  - l. violation of an applicable police department rule or special order.
2. A suspension will be reviewed by the City's Human Resources Division prior to a disciplinary conference being scheduled with the employee.
3. A disciplinary conference will be scheduled at the time of the imposition of a disciplinary suspension. The Chief of Police, the affected employee, a representative from the Human Resources Division, and anyone else deemed necessary by the Chief of Police will attend the disciplinary conference. Members of the Department are permitted to have their supervisor or another member of the Department of their choice with them during the disciplinary conference. During the conference, the affected employee will be given an opportunity to present an explanation of the conduct leading up to the proposed disciplinary action. Employees may, in the Chief's sole discretion, be placed on administrative leave without pay prior to, during, or after the disciplinary conference. The employee will be notified of the Chief's determination following the conference.
4. Any member placed on suspension, shall return his or her badge, identification card, vehicle, and issued firearms.

5. During a suspension, the Departmental member shall not undertake any official police duties.
6. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period, unless accepted under Subsection 9 below. An indefinite suspension is equivalent to dismissal from the department.
7. If the Chief of Police suspends a member of the Department, the Chief shall, within 120 hours after the hour of suspension, file a written statement with the City Manager giving the reasons for the suspension. The Chief of Police shall immediately deliver a copy of the statement in person to the suspended member. The copy of the written statement must inform the suspended Departmental member that if the person wants to appeal to the City Manager, the person must file a written appeal with the City Manager within 10 days after the date the person receives the copy of the statement.
8. The written statement filed by the Chief of Police with the City Manager must point out each rule alleged to have been violated by the suspended Departmental member and must describe the alleged acts of the person that the Chief of Police contends are in violation of the rules.
9. If offered by the Chief of Police, the Departmental member may agree in writing to voluntarily accept, with no right of appeal, a suspension of 16 to 90 calendar days for the violation(s) alleged. The Departmental member must accept the offer within five working days after the date the offer is made. If the person refuses the offer and wants to appeal to the City Manager, the person must file a written appeal with the City Manager within 15 days after the date the person receives the copy of the written statement of suspension.
10. A Departmental member who receives a suspension and who elects not to appeal the action may file a written response within 10 days after the date the person is given written notice of the suspension from the Chief of Police. The written response by the departmental member shall be filed in Department's Internal Affairs files.

#### H. Uncompensated Duty

1. The Chief of Police may assign a member of the Department to uncompensated duty. The Chief of Police may not impose uncompensated duty unless the member of the Department agrees to accept the duty. If the Departmental member agrees to accept uncompensated duty, the Chief of Police shall give the person a

written statement that specifies the date or dates on which the person will perform uncompensated duty.

2. Uncompensated duty may be in place of or in combination with a period of disciplinary suspension without pay. If uncompensated duty is combined with a disciplinary suspension, the total number of uncompensated days may not exceed 15.
3. A member of the Department may not earn or accrue any wage, salary, or benefit arising from length of service while the person is suspended or performing uncompensated duty. The days on which a Departmental member performs assigned uncompensated duty may not be taken into consideration in determining eligibility for a promotional examination. A disciplinary suspension does not constitute a break in a continuous position or in service in the department in determining eligibility for a promotional examination.
4. Except as provided by this section, a member of the Department who performs assigned uncompensated duty retains all rights and privileges of the person's position in the police department and of the person's employment by the municipality.
5. Uncompensated duty in which the Departmental member has accepted the terms of the uncompensated duty in writing is not subject to appeal.

#### I. Demotion

1. The Chief of Police may demote any sergeant or lieutenant for unsatisfactory performance or for gross breaches of discipline or conduct as listed in Section G above.
2. Demotion shall be to the next lowest rank and includes loss of the appropriate supervisory pay.
3. Demotions may be in conjunction with, or in lieu of, a suspension without pay.
4. A voluntary demotion in which the Departmental member has accepted the terms of the demotion in writing is not subject to appeal.
5. A Departmental member who receives a demotion and who elects not to appeal the action may file a written response within 10 days after the date the person is given written notice of the demotion from the Chief of Police. The written response by the departmental member shall be filed in the Department's Internal Affairs files.

J. Termination

1. The Chief of Police may terminate any member of the Department for misfeasance, malfeasance, or nonfeasance of duty or for extreme breaches of discipline or conduct as listed in Section G above.
2. A complete record of the circumstances of the misbehavior shall be made by all persons having knowledge of the misbehavior.

**XII. APPEAL OF DISCIPLINARY ACTION**

- A. Members of the Department who have not completed their probationary period may only appeal a disciplinary action to the Chief of Police.
- B. A suspended, demoted, or terminated member of the Department who has completed their probationary period has the choice to submit an appeal to a Hearing Examiner or to bypass the Hearing Examiner process and proceed directly to an appeal to the City Manager.
- C. Members of the Department are permitted to have their supervisor or another member of the Department of their choice with them during the appeal to a Hearing Examiner or a direct appeal to the City Manager.
- D. Hearing Examiner Appeal Process
  1. A member of the Department may elect to appeal to an independent third party hearing examiner instead of directly to the City Manager. The letter requesting an appeal to a Hearing Examiner must state that if the Departmental member elects to appeal to a hearing examiner, the person waives all rights to appeal to the City Manager.
  2. To exercise the choice of appealing to a hearing examiner, the appealing Departmental member must submit to the Chief of Police a written request as part of the original notice of appeal required under this policy stating the person's decision to appeal to an independent third party hearing examiner.
  3. The hearing examiner's findings and recommendations are reported to the City Manager who makes the final decision. If the Departmental member decides to appeal the final decision by the City Manager, the person may appeal to a district court.
  4. If the appealing Departmental member chooses to appeal to a hearing examiner, the Departmental member and the Chief of Police, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, the Chief of Police shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the

Federal Mediation and Conciliation Service, or their successors in function. The Departmental member and the Chief of Police, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after the date they received the list, each party or the party's designee shall alternate striking a name from the list and the name remaining is the hearing examiner. The parties or their designees shall agree on a date for the hearing.

5. The appeal hearing shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the Departmental member may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure prescribed by Subsection 4 above.
6. In each hearing conducted under this section, the hearing examiner shall hold a full and complete public hearing and has the same duties and powers as the City Manager.
7. In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render their findings and recommendations on the appeal within 10 days after the date the hearing ended.
8. In an appeal that does not involve an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. The hearing examiner's inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's findings or recommendations.
9. The hearing examiner's fees and expenses are the responsibility of by the appealing Departmental member. The costs of a witness are paid by the party who calls the witness.

#### E. City Manager Appeal Process

1. If a suspended, demoted, or terminated member of the Department appeals the disciplinary action directly to the City Manager, the City Manager shall hold a full and complete public hearing and render a decision in writing within 30 days after the date he/she receives notice of appeal. The suspended person and the City Manager may agree to postpone the hearing for a definite period.

2. In a hearing conducted by the City Manager, the Chief of Police is restricted to his/her original written statement and charges, which may not be amended.
3. The City Manager may deliberate the decision in closed session but may not consider evidence that was not presented at the hearing. The City Manager shall render his/her decision in writing.
4. In his/her decision, the City Manager shall state whether the discipline that is being appealed is upheld, modified, or dismissed.
5. If the City Manager finds that the period of disciplinary suspension should be reduced, the City Manager may order a reduction in the period of suspension. If the suspended member of the Department is restored to the position or class of service from which the person was suspended, demoted, or terminated, the member of the Department is entitled to:
  - a. full compensation for the actual time lost as a result of the suspension at the rate of pay provided for the position or class of service from which the person was suspended; and
  - b. restoration of or credit for any other benefits lost as a result of the suspension, including sick leave, vacation leave, and service credit in a retirement system. Standard payroll deductions, if any, for retirement and other benefits restored shall be made from the compensation paid, and the municipality shall make its standard corresponding contributions, if any, to the retirement system or other applicable benefit systems.
6. The City Manager or Police Chief may suspend, demote or dismiss a member of the Department only for violation of the alleged charges only after a finding by the City Manager of the truth of specific charges against the Departmental member.

F. Records Relating to Appeals of Disciplinary Actions or Charges of Misconduct

1. All appeal documents should be considered sensitive records and will be handled accordingly. Access to these documents is limited to those who have a legitimate reason to review or handle them, such as the officer's supervisor, division commander, internal affairs investigator, or the Chief of Police. Upon final disposition, these records will be stored in the officer's permanent personnel file. These files are controlled by the City of Hutto Human Resources Director.

2. The Human Resources Director shall order that the records of a disciplinary action that was taken against a member of the Department be expunged from each file maintained on the Departmental member by the police department if the disciplinary action was entirely overturned on appeal by the City Manager or a court of competent jurisdiction. Documents that must be expunged under this subsection include all documents that indicate disciplinary action was recommended or taken against the Departmental member, such as the recommendations of a disciplinary committee or a letter of suspension. This subsection does not apply if the Departmental member is charged with using excessive force that results in a death or injury and the charge is being investigated by a law enforcement or criminal justice agency other than the Hutto Police Department. This subsection does not require that the Police Department's Internal Affairs records be expunged.
3. The police department shall maintain an investigatory file that relates to a disciplinary action against a member of the Department that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a member of the Department, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The police department may only release information in those investigatory files or documents relating to a charge of misconduct:
  - a. to another law enforcement agency; or,
  - b. to the office of a district or United States attorney.
4. The City Attorney shall provide legal representation in any action related to the release of a file or part of a file.
5. This section does not prevent a member of the Department from obtaining access to any personnel file maintained by the police department.